

**FILING A SEVERANCE REQUEST**

**UNDER THE**

**EDUCATIONAL EMPLOYMENT RELATIONS ACT**

**Public Employment Relations Board**

**April 2006**



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## **PERB'S JURISDICTION**

The Public Employment Relations Board (PERB) is the neutral State agency responsible for administering and enforcing the laws which govern collective bargaining for employees of public schools (grades K-14),<sup>1</sup> State civil service,<sup>2</sup> the University of California, California State University and Hastings College of the Law,<sup>3</sup> cities, counties and special districts,<sup>4</sup> trial courts,<sup>5</sup> and supervisory employees of the Los Angeles County Metropolitan Transportation Authority.<sup>6</sup> PERB does not administer laws which affect employees of private industry, the federal government, and many public transit districts in California.

## **WHAT IS A SEVERANCE REQUEST?**

Under the Educational Employment Relations Act (EERA), a severance request is a proposal by an "employee organization"<sup>7</sup> which seeks to alter an established bargaining unit<sup>8</sup> by removing (or "severing") a group of employees from the unit in order to establish a new bargaining unit. By its severance request, the employee organization seeks at the same time to become the exclusive representative<sup>9</sup> of the proposed new unit.

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<sup>1</sup> Educational Employment Relations Act (EERA) California Government Code section et seq. The text of the EERA and other PERB-administered statutes is available on the PERB web site ([www.perb.ca.gov](http://www.perb.ca.gov)).

<sup>2</sup> Ralph C. Dills Act (Dills) California Government Code section 3512 et seq.

<sup>3</sup> Higher Education Employer-Employee Relations Act (HEERA) California Government Code section 3560 et seq.

<sup>4</sup> Meyers-Milias-Brown Act (MMBA) California Government Code section 3500 et seq. PERB's jurisdiction over the MMBA excludes management employees and peace officers as defined in Section 830.1 of the Penal Code, as well as employees of the City of Los Angeles and County of Los Angeles.

<sup>5</sup> Trial Court Employment Protection and Governance Act (Trial Court Act) California Government Code section 71600 et seq. and Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) California Government Code section 71800 et seq.

<sup>6</sup> Transit Employer-Employee Relations Act (TEERA) California Public Utilities Code section 99560 et seq.

<sup>7</sup> An "employee organization" is any organization which includes employees of a public school employer and which has as one of its primary purposes representing those employees in their relations with that public school employer. (Government Code section 3540.1(d))

<sup>8</sup> A "bargaining unit" (also known as an "appropriate unit" or "negotiating unit") is a grouping of positions (based upon similar duties, qualifications, hours, lines of supervision, history of representation and other factors) for the purpose of bargaining with the employer. The unit determination criteria under EERA are set forth in Government Code section 3545.

<sup>9</sup> The "exclusive representative" is an employee organization that has been recognized by the employer or certified by PERB to represent the employees in the bargaining unit in their employment relations with the employer.

A severance request differs from a decertification petition<sup>10</sup> in several respects, primarily because the severance request seeks to create a new bargaining unit consisting of certain classifications or positions in the established unit while a decertification petition may only be filed for the established unit.

Under EERA, severance requests are filed pursuant to PERB regulations concerning the filing of requests for recognition (Regulations 33050 through 33237) and pursuant to Regulations 33700 and 33710.

### **WHO MAY FILE A SEVERANCE REQUEST?**

A severance request may **ONLY** be filed by an employee organization. The petitioning employee organization seeks both the granting of the severance and to become the exclusive representative of the new unit. A severance request must be accompanied by "proof of support" of at least a majority of employees in the requested unit, clearly stating that employees **WISH TO BE REPRESENTED BY THE PETITIONING EMPLOYEE ORGANIZATION**.

### **WHAT IS PROOF OF SUPPORT?**

For a severance request, "proof of support" is signatures of employees on authorization cards, petitions, membership applications, etc., which clearly state the desire of the employees to be represented for purposes of collective negotiations by the named employee organization. These signatures must each be dated and cannot be more than a year old at the time the request is filed. Complete requirements for proof of support are spelled out in PERB Regulation 32700.

The petitioner files the proof of support with PERB only, and must file the **original** documents. All proof of support materials filed with PERB are considered confidential documents; no other party may look at or receive copies of the support materials.

### **WHEN CAN A SEVERANCE REQUEST BE FILED?**

Generally, a severance request may be filed any time there is no collective bargaining agreement (contract) in effect, except that no severance request may be filed for a period of one year after either an employee organization has been voluntarily recognized or the results of a representation election have been certified. If a valid contract is in effect, no severance request may be filed during the term of that contract, except during a certain period, referred to as the "window period," before the expiration of the contract. The EERA window period is defined in Regulation 33020, and provides that petitions may be filed less than 120 days but more than 90 days prior to the expiration date of the contract.

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<sup>10</sup>For additional information concerning decertification petitions, see PERB Regulations 32770 through 32776 or obtain a copy of the PERB brochure titled "Filing a Decertification Petition" (PERB-1370) from the PERB Web site or any PERB regional office.

## **FILING THE SEVERANCE REQUEST**

Under EERA, a severance request is filed with the employer as a request for recognition. Copies are concurrently filed with the appropriate PERB regional office<sup>11</sup> and served on the exclusive representative of the established unit. The copy of the request for recognition which is filed with PERB must be accompanied by majority proof of support.

A severance request must be filed on an EERA Representation Petition form (PERB-2110). Copies of this form may be obtained from the PERB Web site or any of PERB's regional offices.

The EERA Representation Petition form requires the following information:

1. The name, address, telephone number and agent's name for both the employer and the petitioning employee organization;
2. a description of the proposed unit and number of employees in the unit;
3. whether or not a contract exists and, if so, its effective and expiration dates;
4. the type of petition and date filed with the employer.

A copy of the request must be served upon all interested parties. A proof of service form must be completed and accompany the request. Proof of service forms are available at on the PERB Web site and at each of PERB's regional offices.

A copy of the request, proof of majority support and the completed proof of service form must be filed with the appropriate PERB regional office (either mailed or delivered personally after serving the original on the school district). Only PERB receives the proof of support; other parties must be served with the petition form and proof of service.

## **INVESTIGATION OF THE REQUEST**

Once the severance request is filed, a Board agent will be assigned to review the request and determine its validity. S/he will contact all parties regarding the processing of the petition. Both the employer and exclusive representative will be asked to file responses either supporting or opposing the severance request. If the exclusive representative does not oppose granting the severance, and if the request was timely and adequately supported, the employer may grant voluntary recognition to the petitioner, request an election or dispute the appropriateness of the proposed unit. If the appropriateness of the proposed unit is disputed by either the employer or exclusive representative, and if either the employer or petitioner requests a Board investigation, a Board agent will conduct further investigations, including informal settlement conferences and/or a formal hearing, in order to determine whether the unit

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<sup>11</sup>EERA petitions must be filed in the regional office which serves the county in which the principal office of the employer is located. (See PERB Regulation 32075.)

proposed by the severance request should be granted. The party filing the severance request may file a request for Board investigation, if the employer decision has not granted recognition or requested further action by PERB. Such a petition may be filed within 90 days of the date the employer decision was filed or due to be filed, whichever occurs first (regulation 33230).

### **ELECTION**

Where the proposed unit is agreed to or deemed appropriate but voluntary recognition cannot be granted by the employer, PERB will conduct an election in the unit to determine which employee organization, if any, shall become the exclusive representative of the new unit. The ballot in the election would include three choices: The name of the incumbent exclusive representative,<sup>12</sup> the name of the employee organization which filed the severance request, and "no representation."<sup>13</sup> A majority of the valid votes cast determines the outcome of the election. Additional information concerning the conduct of representation elections is available by obtaining a copy of the PERB brochure titled "Representation Elections" (PERB-1002) from the PERB Web site or any PERB regional office.

### **APPEAL OF A DISMISSAL**

If the unit is not found to be appropriate and the severance request is denied or if the request is dismissed following a Board investigation for lack of adequate support or as untimely, a written appeal may be filed with the Board itself. An original and 5 copies of the appeal must be filed in the headquarters office.<sup>14</sup> The appeal must be in writing and must state the specific issue(s) of procedure, fact, law or rationale that is appealed and state the grounds for the appeal. Service and proof of service of the appeal are required on all parties and on the regional office which issued the dismissal.

### **ASSISTANCE**

If you have procedural questions regarding the preparation of a severance request, please contact the appropriate PERB regional office. If you require legal assistance or any advice,

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<sup>12</sup>The incumbent is entitled to appear on the ballot unless the organization specifically declined interest in representing the new, severed unit and waived its right to be listed on the ballot. In such a case, unless there is still more than employee organization that has qualified to appear on a ballot, the employer would be required to recognize the petitioner.

<sup>13</sup>Additional employee organizations might qualify to appear on the ballot as a result of filing "interventions" on the severance request provided such interventions were both timely filed and adequately supported (to be included on the ballot, an intervenor would be required to demonstrate support of at least 30% of the unit found to be appropriate). Interventions may be filed at any time during the 15 workdays following the posting of notice of the initial severance request (unless the close of a window period allows for fewer days). An intervention may also seek a different unit.

<sup>14</sup>An appeal must be filed within 20 days following the date of service of the decision if the decision results from a formal hearing (Regulation 32300) or within 10 days following the date of service of an administrative determination (Regulation 32360).

please contact your legal representative or the nearest County Bar Association for attorney referral services.

This booklet is meant to provide a GENERAL overview regarding the filing of a severance request and should not be exclusively relied upon in lieu of PERB regulations, case law and/or legal advice.

The statutes PERB administers are contained in the Government Code and the Public Utilities Code. (See footnotes 1 through 6.) Code volumes can be found at the State law library, county law libraries, and University of California law school libraries. A complete copy of PERB's regulations (California Code of Regulations, title 8, section 31001 et seq.), as well as the statutes administered by PERB, may be purchased from PERB, and are also available on the PERB web site ([www.perb.ca.gov](http://www.perb.ca.gov)).

**The statute and PERB's current regulations should always be consulted prior to any filing to ensure that all procedural requirements are met.**